



Atty. Docket: ITW-13111

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

John H. Schneider et al. : Group Art Unit: 3721

Serial No.: 10/042,985 : Examiner: Truong, T.K.

Filed: October 19, 2001

Title: TAMPER-EVIDENT EASY-OPEN SLIDER
PACKAGE AND RELATED METHODS
OF MANUFACTURE

Hon. Commissioner for Patents
Alexandria, VA 22313

APPEAL BRIEF

A Notice of Appeal was filed in the above-identified application on June 14, 2006. A Pre-Appeal Brief Request for Review was filed concurrently therewith. On August 15, 2006, a Notice of Panel Decision from Pre-Appeal Brief Review was mailed in which the time for filing an appeal brief was reset to be one month from the mailing of the decision, i.e., September 15, 2006. This Appeal Brief is being filed within two months of that deadline. Accordingly, a petition requesting a two-month extension of time is being filed concurrently herewith. Also enclosed is a check in the amount of \$950.00 to cover the fees for filing an appeal brief and for a two-month extension of time.

1. Real Party in Interest

Illinois Tool Works Inc., headquartered in Glenview, Illinois, is the assignee and owner of 100% interest in this patent application and therefore is the real party in interest.

2. Related Appeals and Interferences

The appellant, appellant's legal representative and the assignee do not know of any other appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. Status of Claims

Claims 3, 7-12 and 58-65 are pending; claims 1, 2, 4-6, and 12-57 have been canceled. Of the pending claims, claims 3, 7-11, and 58-65 stand rejected and claim 12 has been withdrawn. The Final Rejection of claims 3, 7-11, and 58-65 is being appealed.

4. Status of Amendments

An Amendment After Final Rejection was filed on May 15, 2006. That amendment was entered by an Advisory Action mailed on June 7, 2006.

5. Summary of Claimed Subject Matter

This application has two independent claims 58 and 63. Both independent claims are involved in this appeal, along with dependent claim 60.

The subject matter defined in independent claim 58 is a package comprising a receptacle (see p. 6, ll. 19-21; items 12 and 14 in FIG. 2) having a mouth at an upper end, a flexible zipper (see item 24 in FIG. 1; p. 6, ll. 25-26) attached to the mouth and comprising first and second fastener strips, a slider

(see item 26 in FIG. 1; p. 7, ll. 1-2) movably mounted to the zipper for alternately opening or closing portions of the first and second fastener strips depending on the direction of movement of the slider relative to the zipper (see p. 7, ll. 3-6), and a header (see item 16 in FIG. 1; p. 7, ll. 9-13) enclosing the zipper and the slider. The slider has a top at a first elevation and a bottom at a second elevation lower than the first elevation (see item 26 in FIG. 1). The header comprises first and second side edges and first and second walls each extending from the first side edge to the second side edge (see item 16 in FIG. 1; items 44 and 46 in FIG. 2; p. 9, ll. 18-23). The first wall of the header comprises a first line of weakness (see item 22 in FIGS. 1 and 2; p. 7, ll. 22-25) having a straight portion parallel to the zipper when the zipper is straight. The first line of weakness extends across the header at a third elevation that is lower than the second elevation (see item 22 in FIG. 1; p. 7, ll. 26-27). The first header wall comprises a slit (see item 20 in FIG. 1; p. 8, ll. 1-2) defined by a pair of internal edges of equal length and separated by substantially no gap when the internal edges lie in a plane, which internal edges meet at first and second termination points at opposite ends of the slit, the first termination point being at a fourth elevation higher than the first elevation (see item 20 in FIG. 1; p. 8, ll. 5-13), and the second termination point being at a fifth elevation lower than the second elevation and at or near the third elevation (see item 20 in FIG. 1; p. 8, ll. 5-13).

Claim 60, dependent on independent claim 58, recites that the first header wall further comprises a tear initiator (item 18 in FIG. 1; p. 8, ll. 4-5).

In accordance with the disclosed embodiment shown in FIG. 1, the strategically placed slit 20 diverts the tearing action initiated at the elevation of the tear notch 18 down to the elevation of the line of weakness 22.

The subject matter defined in independent claim 63 is a package having the structural limitations recited in claims 58 and 60, with the further limitation that neither of the termination points of the slit are located at one of the side edges of the header (see item 20 in FIG. 1). Although the latter limitation does not appear in claim 58, Appellant believes that such limitation is inherent in claim 58 because the recited slit could not be defined by first and second internal edges that meet at first and second termination points if the slit were to extend to the side edge.

6. Ground of Rejection to Be Reviewed on Appeal

In ¶ 7 of the Final Rejection, claims 3, 7-11, and 58-65 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Strand *et al.* (US 6,360,513) in view of Keller (US 3,255,869) or Deutschländer (US 4,147,583) or Kopp *et al.* (US 5,371,997).

7. Argument

The Appellant believes that the Final Rejection is rejection is clearly erroneous for the following reasons.

Independent claim 58, in substance, is directed to a package comprising a slider-operated zipper enclosed by a header, that in turn comprises a header wall having a slit that extends from an elevation higher than the top of the slider to an elevation lower than the bottom of the slider, neither end of the slit being at either side edge of the header. This structural limitation cannot be found in any of the four references applied in the rejection. The Examiner concedes that Strand does not teach such a slit, but asserts that each of the three secondary references separately suggests that a slit could be substituted for the line of weakness 13 disclosed in Strand. The Applicants respectfully submit that this logic is unsupportable.

Strand discloses a scoreline 12 having a straight horizontal section, a curved or arcuate section 13 and a tear notch 24. The header of Strand can be torn substantially diagonally from the tear notch to the horizontal section along the arcuate section 13. Strand neither discloses nor suggests that the straight horizontal section and the substantially diagonal arcuate section 13 can have different structures.

The secondary references each disclose slits, but none of those teachings suggest substituting a single slit for the substantially diagonal arcuate section 13 of Strand.

The Keller patent discloses a horizontal tear line comprising a series of aligned slits. While it might be obvious to substitute a multiplicity of short slits, as taught by

Keller, in place of the scoreline 12 (including arcuate section 13) as disclosed by Strand, the result would lack the structure recited in Appellant's claim 58, namely, a slit that extends from an elevation higher than the slider top to an elevation lower than the slider bottom. Accordingly, the combination of Strand and Keller is insufficient to make a *prima facie* case for obviousness since the aforementioned limitation would still be missing from the proposed combination of prior art teachings. Independent claim 63 also recites in substance that the slit extends from an elevation higher than the slider top to an elevation lower than the slider bottom, and is also not obviated by Strand in view of Keller.

Furthermore, neither Keller nor Strand contains any suggestion that the spaced slits of Keller could be substituted for only the substantially diagonal arcuate section 13 of the Strand scoreline, while still making the horizontal sections of the scoreline 12 of Strand by scoring. Keller and Strand each disclose a tear line that can be formed in one operation. There is no suggestion that it would be desirable to perform two distinct operations, namely, scoring and slitting, to form a tear line having the shape taught by Strand.

The Kopp patent discloses a bag having a top transverse seal 7 with an enlargement 8 at one side edge. The enlargement is provided with a tear-open slit 9 that starts at the side edge and is comparable to known tear initiators, such as Applicants' tear notch 18. The purpose of the tear-open slit 9 is to assist in tearing open the bag, apparently at an elevation below the transverse seal 7. The Examiner asserts that it would be obvious to substitute the tear-open slit 9 of Kopp for the substantially diagonal arcuate section 13 of Strand's tear line. The Applicant respectfully disagrees. Kopp teaches using a slit as a tear initiator at the side edge of the bag. Accordingly, it would be obvious to substitute the tear slit 9 of Kopp for the tear notch 24 of Strand. However, Kopp neither discloses nor suggests the desirability of substituting a slit for the substantially diagonal arcuate section 13 of Strand's tear line, which does not reach the side edge of the bag.

Similarly, in Deutschländer, the oblique or diagonal slits 24' and 24" start at the side edges of the strip or header 17. The purpose of these slits is to facilitate tearing of the neighboring seam 10 (see col. 2, lines 16 and 17), thus opening the package. The strip or header 17 is disposed above the transverse seam 10 at the top of the package. The package has no zipper or slider. The provision of a diagonal slit that starts at the side edge of the header 17 neither discloses nor suggests substituting a diagonal slit for the substantially diagonal arcuate section 13 of Strand's tear line, which does

not start at the side edge of the bag.

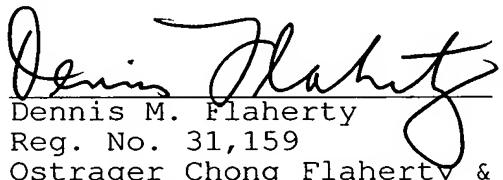
In view of the foregoing, Applicants submit that claims 3, 7-11, and 58-65 are patentable over the combination of prior art cited by the Examiner. Accordingly, it is respectfully requested that the Final Rejection be overturned and that this application be allowed.

In the event that claim 58 is allowed, then claim 12 – which depends from claim 58 and was withdrawn from further consideration in the Final Rejection as being drawn to a non-elected species – should also be allowed.

Respectfully submitted,

November 15, 2006

Date


Dennis M. Flaherty
Reg. No. 31,159
Ostrager Chong Flaherty &
Broitman P.C.
250 Park Avenue, Suite 825
New York, NY 10177-0899
Tel. No.: 212-681-0600

CERTIFICATE OF MAILING

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date set forth below.

November 15, 2006

Date


Dennis M. Flaherty

Claims Appendix

Claim 3: The package as recited in claim 58, wherein said first slit is inclined at an angle in a range of 30 to 90 degrees relative to a line of said zipper.

Claim 7: The package as recited in claim 59, wherein said first and second lines of weakness are overlapping.

Claim 8: The package as recited in claim 59, wherein said first and second slits are overlapping.

Claim 9: The package as recited in claim 59, wherein lower end points of said first and second slits are closer together than are upper end points of said first and second slits.

Claim 10: The package as recited in claim 58, wherein said header further comprises a seal for sealing said first and second walls together.

Claim 11: The package as recited in claim 58, wherein said header is integrally formed with said receptacle.

Claim 58: A package comprising a receptacle having a mouth at an upper end, a flexible zipper attached to said mouth and comprising first and second fastener strips, a slider movably mounted to said zipper for alternately opening or closing portions of said first and second fastener strips depending on the direction of movement of said slider relative to said zipper, said slider having a top at a first elevation and a bottom at a second elevation lower than said first elevation, and a header enclosing said zipper and said slider, wherein said header comprises first and second side edges and first and second walls each extending from said first side edge to said second side edge, said first wall of said header comprising:

a first line of weakness having a straight portion parallel to said zipper when said zipper is straight, said first line of weakness extending across said header at a third elevation that is lower than said second elevation; and

a first slit defined in said first header wall by a pair of internal edges of equal length and separated by substantially no gap when said internal edges lie in a plane, said internal edges meeting at first and second termination points at opposite ends of said first slit, said first termination point being at a fourth elevation higher than said first elevation, and said second termination point being at a fifth elevation lower than said second elevation and at or near said third elevation.

Claim 59: The package as recited in claim 58, wherein said second wall of said header comprises:

a second line of weakness having a straight portion parallel to said zipper when said zipper is straight and extending across said header at a sixth elevation that is lower than said second elevation; and

a second slit having first and second termination points at opposite ends thereof, neither of said first and second termination points of said second slit being located at one of said first and second side edges, said first termination point of said second slit being at a seventh elevation higher than said first elevation, and said second termination point of said second slit being at an eighth elevation lower than said second elevation and at or near said sixth elevation, said second slit being defined in said first header wall by a pair of mutually parallel internal edges of equal length and separated by substantially no gap when said internal edges lie in a plane.

Claim 60: The package as recited in claim 58, wherein said first header wall further comprises a tear initiator that starts at said first side edge at a sixth elevation higher than said first elevation.

Claim 61: The package as recited in claim 60, wherein said tear initiator is a tear notch.

Claim 62: The package as recited in claim 58, wherein said first line of weakness is a scoreline.

Claim 63: A package comprising a receptacle having a mouth at an upper end, a flexible zipper attached to said mouth and comprising first and second fastener strips, a slider movably mounted to said zipper for alternately opening or closing portions of said first and second fastener strips depending on the direction of movement of said slider relative to said zipper, said slider having a top and a bottom, and a header enclosing said zipper and said slider, wherein said header comprises first and second side edges and first and second walls each extending from said first side edge to said second side edge, said first wall of said header comprising:

a tear initiator that starts at said first side edge and terminates at a point located at a first elevation that is higher than said slider top;

a line of weakness having a straight portion parallel to said zipper when said zipper is straight, said line of weakness extending across said header at a second elevation that is lower than said slider bottom; and

a slit defined in said first header wall by a pair of internal edges of equal length and separated by substantially no gap when said internal edges lie in a plane, said internal edges meeting at first and second termination points at opposite ends of said slit, neither of said first and second termination points being located at one of said first and

Atty. Docket: ITW-13111

second side edges, said first termination point being at or near said first elevation, and said second termination point being at or near said second elevation.

Claim 64: The package as recited in claim 63, wherein said tear initiator is a tear notch.

Claim 65: The package as recited in claim 63, wherein said line of weakness is a scoreline.